

104TH CONGRESS
1ST SESSION

H. R. 790

To require certain Federal agencies to protect the rights of private property owners.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1995

Mr. TAUZIN (for himself, Mr. FIELDS of Texas, Mr. BACHUS, Mr. BAKER of Louisiana, Mr. BALLENGER, Mr. BARCIA, Mr. BARRETT of Nebraska, Mr. BONILLA, Mr. BONO, Mr. BREWSTER, Mr. BUNNING of Kentucky, Mr. CALLAHAN, Mr. CALVERT, Mr. COBLE, Mr. COBURN, Mr. COMBEST, Mr. CONDIT, Mr. COX of California, Mr. CUNNINGHAM, Ms. DANNER, Mr. DICKEY, Mr. DOOLEY, Mr. DOOLITTLE, Mr. DORNAN, Ms. DUNN of Washington, Mr. EDWARDS, Mr. EMERSON, Mr. GEKAS, Mr. PETE GEREN of Texas, Mr. GILLMOR, Mr. GOODLATTE, Mr. HALL of Texas, Mr. HANCOCK, Mr. HASTERT, Mr. HASTINGS of Washington, Mr. HAYES, Mr. HEFLEY, Mr. HERGER, Mr. HOEKSTRA, Mr. HOKE, Mr. HOLDEN, Mr. HOUGHTON, Mr. HUNTER, Mr. HUTCHINSON, Mr. INGLIS of South Carolina, Mr. ISTOOK, Mr. SAM JOHNSON of Texas, Mr. KING, Mr. KNOLLENBERG, Mrs. LINCOLN, Mr. LAUGHLIN, Mr. LEWIS of California, Mr. LEWIS of Kentucky, Mr. LIGHTFOOT, Mr. LIVINGSTON, Mr. MCCOLLUM, Mr. MCCRERY, Mr. MCHUGH, Mr. MCKEON, Mr. MILLER of Florida, Mr. MONTGOMERY, Mr. MOORHEAD, Mr. ORTIZ, Mr. OXLEY, Mr. PACKARD, Mr. PARKER, Mr. PAXON, Mr. PICKETT, Mr. POMBO, Mr. ROBERTS, Mr. ROHRABACHER, Mr. ROYCE, Mr. SENSENBRENNER, Mr. SKEEN, Mr. SKELTON, Mr. SOLOMON, Mr. SOUDER, Mr. STENHOLM, Mr. STUMP, Mr. TALENT, Mr. TAYLOR of North Carolina, and Mr. WILSON) introduced the following bill; which was referred to the Committee on the Judiciary and, in addition, to the Committees on Resources and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require certain Federal agencies to protect the rights
of private property owners.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Private Property Own-
5 ers Bill of Rights”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

8 (1) Our democracy was founded on principles of
9 ownership, use, and control of private property.
10 These principles are embodied in the fifth amend-
11 ment to the Constitution prohibiting the taking of
12 private property without the payment of just com-
13 pensation.

14 (2) A number of Federal environmental pro-
15 grams, specifically the Endangered Species Act of
16 1973 (16 U.S.C. 1531 et seq.) and section 404 of
17 the Federal Water Pollution Control Act (33 U.S.C.
18 1344) have been implemented by employees, agents,
19 and representatives of the Federal Government in a
20 manner that deprives private property owners of the
21 use and control of their property.

1 (3) As new Federal programs are proposed that
2 would limit and restrict the use of private property
3 to provide habitat for plant and animal species, the
4 rights of private property owners must be recognized
5 and respected.

6 (4) Private property owners are being forced by
7 Federal policy to resort to extensive, lengthy, and
8 expensive litigation to protect certain basic civil
9 rights guaranteed by the Constitution.

10 (5) Since many private property owners do not
11 have the financial resources or the extensive commit-
12 ment of time to proceed in litigation against the
13 Federal Government, a clear Federal policy is need-
14 ed to guide and direct Federal agencies with respect
15 to their implementation of environmental laws that
16 directly impact private property.

17 (6) While all private property owners should
18 and must abide by current nuisance laws and should
19 not use their property in a manner that harms their
20 neighbors, these laws have traditionally been en-
21 acted, implemented, and enforced at the State and
22 local levels where they are best able to protect the
23 rights of all private property owners and local
24 citizens.

1 (7) While traditional pollution control laws are
2 intended to protect the general public's health and
3 physical welfare, current habitat protection pro-
4 grams are intended to protect the welfare of plant
5 and animal species, while allowing the recreational
6 and esthetic opportunities for the public.

7 (b) PURPOSES.—It is the purpose of this Act to pro-
8 vide a consistent Federal policy to encourage, support, and
9 promote the private ownership of property and to ensure
10 that the constitutional and legal rights of private property
11 owners are protected by the Federal Government, its em-
12 ployees, agents, and representatives.

13 **SEC. 3. PROTECTION OF PRIVATE PROPERTY RIGHTS.**

14 (a) COMPLIANCE; LEAST IMPACT.—In implementing
15 and enforcing the Acts, each agency head shall comply
16 with applicable State and tribal government laws, includ-
17 ing laws relating to private property rights and privacy;
18 and shall administer and implement the Acts in a manner
19 that has the least impact on private property owners' con-
20 stitutional and other legal rights.

21 (b) RULES AND REGULATIONS.—Each agency head
22 shall develop and implement rules and regulations for en-
23 suring that the constitutional and other legal rights of pri-
24 vate property owners are protected when the agency head
25 makes, or participates with other agencies in the making

1 of, any final decision that restricts the use of private
2 property.

3 **SEC. 4. PROPERTY OWNER CONSENT FOR ENTRY.**

4 (a) PROHIBITION ON COLLECTION OF INFORMATION
5 WITHOUT CONSENT.—An agency head may not enter pri-
6 vately-owned property to collect information regarding the
7 property, unless the private property owner has—

- 8 (1) consented in writing to that entry;
9 (2) after providing that consent, been provided
10 notice of that entry; and
11 (3) been notified that any raw data collected
12 from the property must be made available at no
13 cost, if requested by the private property owner.

14 (b) ENTRY TO OBTAIN CONSENT OR PROVIDE NO-
15 TICE.—Subsection (a) does not prohibit entry onto prop-
16 erty for the purpose of obtaining consent or providing no-
17 tice required under subsection (a).

18 (c) COURT ORDERS.—Nothing herein shall prevent a
19 duly authorized law enforcement officer from entering pri-
20 vate property under the authority of an order of a court.

21 **SEC. 5. RIGHT TO REVIEW AND DISPUTE DATA COLLECTED**
22 **FROM PRIVATE PROPERTY.**

23 An agency head may not use data that is collected
24 on privately-owned property to implement or enforce any
25 of the Acts, unless—

1 (1) the agency head has provided to the private
2 property owner—

3 (A) access to the information;

4 (B) a detailed description of the manner in
5 which the information was collected; and

6 (C) an opportunity to dispute the accuracy
7 of the information; and

8 (2) the agency head has determined that the in-
9 formation is accurate, if the private property owner
10 disputes the information pursuant to subparagraph
11 (C).

12 **SEC. 6. RIGHT TO AN ADMINISTRATIVE APPEAL OF WET-**
13 **LANDS DECISIONS.**

14 Section 404 of the Federal Water Pollution Control
15 Act (33 U.S.C. 1344) is amended by adding at the end
16 the following new subsection:

17 “(u) ADMINISTRATIVE APPEALS.—

18 “(1) The Secretary or Administrator shall,
19 within 180 days after the date of enactment of the
20 Private Property Owners Bill of Rights and after
21 notice and opportunity for public comment, issue
22 rules to establish procedures to allow private prop-
23 erty owners or their authorized representatives an
24 opportunity for an administrative appeal of the fol-
25 lowing actions under this section:

1 “(A) A determination of regulatory juris-
2 diction over a particular parcel of property.

3 “(B) The denial of a permit.

4 “(C) The terms and conditions of a permit.

5 “(D) The imposition of an administrative
6 penalty.

7 “(E) The imposition of an order requiring
8 the private property owner to restore or other-
9 wise alter the property.

10 “(2) Rules issued under paragraph (1) shall
11 provide that any administrative appeal of an action
12 described in paragraph (1) shall be heard and de-
13 cided by an official other than the official who took
14 the action, and shall be conducted at a location
15 which is in the vicinity of the property involved in
16 the action.”.

17 **SEC. 7. RIGHT TO ADMINISTRATIVE APPEAL UNDER THE**
18 **ENDANGERED SPECIES ACT OF 1973.**

19 Section 11 of the Endangered Species Act of 1973
20 (16 U.S.C. 1540) is amended by adding at the end the
21 following new subsection:

22 “(i) ADMINISTRATIVE APPEALS.—

23 “(1) The Secretary shall, within 180 days after
24 the date of enactment of the Private Property Own-
25 ers Bill of Rights and after notice and opportunity

1 for public comment, issue rules to establish proce-
2 dures to allow private property owners or their au-
3 thorized representatives an opportunity for an ad-
4 ministrative appeal of the following actions under
5 this Act:

6 “(A) A determination that a particular
7 parcel of property is critical habitat of a listed
8 species.

9 “(B) The denial of a permit for an inciden-
10 tal take.

11 “(C) The terms and conditions of an inci-
12 dental take permit.

13 “(D) The imposition of an administrative
14 penalty.

15 “(E) The imposition of an order prohibit-
16 ing or substantially limiting the use of the prop-
17 erty.

18 “(2) Rules issued under paragraph (1) shall
19 provide that any administrative appeal of an action
20 described in paragraph (1) shall be heard and de-
21 cided by an official other than the official who took
22 the action, and shall be conducted at a location
23 which is in the vicinity of the parcel of property in-
24 volved in the action.”.

1 **SEC. 8. COMPENSATION FOR TAKING OF PRIVATE PROP-**
2 **ERTY.**

3 (a) ELIGIBILITY.—(1) A private property owner that,
4 as a consequence of a final qualified agency action of an
5 agency head, is deprived of 50 percent or more of the fair
6 market value, or the economically viable use, of the af-
7 fected portion of the property, as determined by a quali-
8 fied appraisal expert, is entitled to receive compensation
9 in accordance with this section.

10 (2) No compensation shall be required under this sec-
11 tion if the owner's use or proposed use of the property
12 is a public nuisance as determined and defined by the laws
13 of the State in which the property is located or is prohib-
14 ited by laws other than the Acts as defined in section
15 10(1) of this Act.

16 (b) DEADLINE.—Within 90 days after receipt of a
17 final decision of an agency head that deprives a private
18 property owner of fair market value or viable use of prop-
19 erty for which compensation is required under subsection
20 (a), the private property owner may submit in writing a
21 request to the agency head for compensation in accordance
22 with subsection (c).

23 (c) AGENCY HEAD'S OFFER.—The agency head,
24 within 180 days after the receipt of a request for com-
25 pensation, shall stay the decision and shall provide to the
26 private property owner—

1 (1) an offer to purchase the affected property
2 or an interest in the affected property of the private
3 property owner at a fair market value assuming no
4 use restrictions under the Acts; and

5 (2) an offer to compensate the private property
6 owner for the difference between the fair market
7 value of the property without those restrictions and
8 the fair market value of the property with those re-
9 strictions.

10 (d) PRIVATE PROPERTY OWNERS' RESPONSE.—A
11 private property owner shall have 60 days after the date
12 of receipt of the agency head's offers under subsection (c)
13 (1) and (2) to accept one of the offers or to reject both
14 offers. If the private property owner rejects both offers,
15 the private property owner may submit the matter for ar-
16 bitration to an arbitrator appointed by the agency head
17 from a list of arbitrators submitted to the agency head
18 by the American Arbitration Association. The arbitration
19 shall be conducted in accordance with the real estate valu-
20 ation arbitration rules of that association. For purposes
21 of this section, an arbitration is binding on the agency
22 head and a private property owner as to the amount, if
23 any, of compensation owed to the private property owner
24 and whether for purposes of this section the private prop-
25 erty owner has been deprived of fair market value or viable

1 use of property for which compensation is required under
2 subsection (a).

3 (e) PAYMENT.—An agency head shall pay a private
4 property owner any compensation required under the
5 terms of an offer of the agency head that is accepted by
6 the private property owner in accordance with subsection
7 (d), or under a decision of an arbiter under that sub-
8 section, by not later than 60 days after the date of the
9 acceptance or the date of the issuance of the decision, re-
10 spectively.

11 (f) FORM OF PAYMENT.—Payment under this sec-
12 tion, as that form is agreed to by the agency head and
13 the private property owner, may be in the form of—

14 (1) payment of an amount equal to the fair
15 market value of the property on the day before the
16 date of the final qualified agency action with respect
17 to which the property or interest is acquired;

18 (2) a payment of an amount equal to the reduc-
19 tion in value; or

20 (3) conveyance of real property or an interest in
21 real property having a fair market value equal to
22 that amount.

23 (g) SOURCE OF FUNDS FOR PAYMENT.—Compensa-
24 tion required under this Act may be paid from funds ap-
25 propriated for the purpose of acquiring and protecting

1 wildlife habitat and wetlands. Notwithstanding any other
2 law, amounts appropriated to the Land and Water Con-
3 servation Fund may be used for—

4 (1) payments required under subsection (a);
5 and

6 (2) acquisitions of property and interests re-
7 quired under subsection (a).

8 (h) OTHER RIGHTS PRESERVED.—This section does
9 not preempt, alter, or limit the availability of any remedy
10 for the taking of property or an interest in property that
11 is available under the Constitution or any other law.

12 (i) FINAL JUDGMENTS.—When a private property
13 owner unsuccessfully seeks compensation under this sec-
14 tion and thereafter files a claim for compensation under
15 the fifth amendment to the Constitution and is successful
16 in obtaining a final judgment ordering compensation from
17 the claims court for that claim, the agency head making
18 the final agency decision resulting in the taking shall reim-
19 burse the judgment fund for the amount of the judgment
20 against the United States from funds appropriated to the
21 agency for the 2 fiscal years following payment and shall
22 be liable for payment to the plaintiff of compounded inter-
23 est from the date of the taking.

1 **SEC. 9. JURISDICTION AND JUDICIAL REVIEW.**

2 Notwithstanding any other provision of law, a private
3 property owner may bring a suit under the fifth amend-
4 ment of the Constitution for compensation for the taking
5 of private property or a suit to challenge the validity of
6 any qualified agency action under the Acts as defined in
7 section 10(1) that adversely affects his or her interest in
8 private property, in either the United States District
9 Court or the United States Claims Court. Each court shall
10 have concurrent jurisdiction over both claims for monetary
11 relief and claims seeking invalidation of a qualified agency
12 action. A private property owner may file both claims in
13 the same proceeding seeking either remedy in the alter-
14 native.

15 **SEC. 10. DEFINITIONS.**

16 For the purpose of this Act:

17 (1) The term “the Acts” means the Endan-
18 gered Species Act of 1973 (16 U.S.C. 1531 et seq.)
19 and the section 404 of the Federal Water Pollution
20 Control Act (33 U.S.C. 1344).

21 (2) The term “agency head” means the Sec-
22 retary or Administrator with jurisdiction or author-
23 ity to take a final agency action under the Endan-
24 gered Species Act of 1973 (16 U.S.C. 1531 et seq.)
25 or section 404 of the Federal Water Pollution Con-
26 trol Act (33 U.S.C. 1344).

1 (3) The term “Private property owner” means
2 a non-Federal person (other than an officer, em-
3 ployee, agent, department, or instrumentality of a
4 State, municipality, or political subdivision of a
5 State, or a State, municipality, or subdivision of a
6 State) that—

7 (A) owns property referred to in paragraph

8 (4) (A) or (B); or

9 (B) holds property referred to in para-
10 graph (4)(C).

11 (4) The term “property” means—

12 (A) land;

13 (B) any interest in land; and

14 (C) any proprietary water right.

15 (5) The term “qualified agency action” means
16 an agency action (as that term is defined in section
17 551(13) of title 5, United States Code) that is—

18 (A) under section 404 of the Federal
19 Water Pollution Control Act (33 U.S.C. 1344);
20 or

21 (B) under the Endangered Species Act of
22 1973 (16 U.S.C. 1531 et seq.).

1 **SEC. 11. PRIVATE PROPERTY OWNER PARTICIPATION IN**
2 **COOPERATIVE AGREEMENTS.**

3 Section 6 of the Endangered Species Act of 1973 (16
4 U.S.C. 1535) is amended by adding at the end the follow-
5 ing new subsection:

6 “(j) Notwithstanding any other provision of this sec-
7 tion, when the Secretary enters into a management agree-
8 ment under subsection (b) with any non-Federal person
9 that establishes restrictions on the use of property, the
10 Secretary shall notify all private property owners or les-
11 sees of the property that is subject to the management
12 agreement and shall provide an opportunity for each pri-
13 vate property owner or lessee to participate in the manage-
14 ment agreement.”.

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